

ORDER BELOW EXH.207.
(Passed on 15.06.2024)

1. This is an application by defendant for referring the matter to Commercial Court.

2. It is contention of defendant that in present suit then court by order dtd. 11.05.2019 passed below Exh.1 ordered that suit to be tried as commercial suit, however during that period Commercial Court suit register was not opened/started by concerned section and accordingly suit was registered as Special Civil Suit. It is further contention of defendant that though suit is registered as Spl.Civil Suit still it needs to be tried as commercial suit. Therefore, it may be referred to designated Commercial Court. Defendant relied on Notification dtd. 03.07.2019 issued by Law & Judiciary Department, Mantralaya, Mumbai to contend that court of Civil Judge Senior Division is designated Court.

3. Application is contested by plaintiff on the ground that suit is of 2002. The provisions of Commercial Court's Act are not applicable. Application is filed to prolong suit. Plaintiff prayed for rejection of application.

4. Heard learned counsel for defendant Shri. Vyanketesh Deshpande. He argued that though suit is filed in the year 2002, plaintiff carried amendment in the year 2019 and sought relief of declaration. He further argued that amendment can not relate back to the date of filing of suit and cure the defect of limitation. He relied on **Vishwambar Vs. Laxminarayan** reported in (2001) 6 SCC 163, wherein Hon'ble Supreme Court held that amendment though made

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properly can not relate back to the date of filing of the suit and cure the defect of limitation. It is further held that where the amendment changed the basis of the suit itself, the suit would be taken to have been filed on the date of the amendment for the purpose of limitation.

5. He further argued that the amendment carried out in the year 2019 i.e. after the Commercial Courts Act came into force. He further argued that earlier Court directed to register suit as commercial suit, but at the relevant time no commercial suit register was opened in court. Therefore, he prayed that suit may be sent to Commercial Court.

6. Learned counsel for plaintiff Shri. N.M. Agrawal argued that though suit is renumbered in 2019, date of institution is relevant. He further, argued that dispute started in the year 2002. Therefore, the provisions of Commercial Courts Act are not applicable.

7. Considered submissions. Present suit is filed on 29.01.2002, which was registered as RCS No.68/2002. In the year 2019 due to amendment in plaint, it was re-registered as Spl.C.S. No. 71/2019. Plaintiff carried out amendment in plaint as per order dtd. 20.07.2019 and added certain paragraphs and changed the valuation of suit to Rs.7,40,000/-. Whether amendment carried out by plaintiff relate back to the date of filing of suit and whether amended prayer (if any) is within limitation, can not be a question to determine the jurisdiction of Commercial Court. In view of the cited judgment of Hon'ble Supreme Court, the suit would

be taken to have been filed on the date of the amendment for the purpose of limitation. At this stage question of limitation is not subject matter of this application, and therefore ratio laid down in cited case is not applicable to present set of facts.

8. Under sec. 2(1)(c) term “commercial dispute” is defined. The jurisdiction of the Commercial Court is defined u/sec. 6 of the Commercial Courts Act, 2015. Under Sec. 1(3) of said Act, it shall be deemed to have come into force on 23.10.2015. Whether dispute referred in present suit is “commercial dispute” or not can not be a question for consideration at this stage, because this court has no jurisdiction to transfer/ refer suit to Commercial Court, as at the time of commencement of Commercial Courts Act, present suit was not transferred. So also when designated Commercial Court was constituted present proceedings was not transferred.

9. Under sec.15 (3) of the Commercial Courts Act (3) any suit or application, including an application under the Arbitration and Conciliation Act, 1996, relating to a commercial dispute of Specified Value shall stand transferred to the Commercial Division or Commercial Court under sub-section (1) or sub-section (2). This procedure was not followed when Notification for constituting court was received.

10. Now it is necessary to consider what is the provision in Commercial Courts Act, if suit is not transferred earlier. It is necessary to refer to sec.15(5) of Commercial Courts Act. Under Sec.15(5) of the Commercial Courts Act,

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in the event that such suit or application is not transferred in the manner specified in sub-section (1), sub-section (2) or sub-section (3), the Commercial Appellate Division of the High Court may, on the application of any of the parties to the suit, withdraw such suit or application from the court before which it is pending and transfer the same for trial or disposal to the Commercial Division or Commercial Court, as the case may be, having territorial jurisdiction over such suit, and such order of transfer shall be final and binding.

11. Thus, in view of the above provisions even assuming that dispute in present suit may be commercial dispute, this court can not on application of the party transfer/refer it to the Commercial Court as Specific Forum is provided u/sec. 15(3) of the Commercial Courts Act. Therefore, application has no substance and deserves to be rejected. Hence, following order.

ORDER

- i) Application Exh.207 is rejected.
- ii) Costs will be cost in cause.

Date : 15.06.2024

(D.S. Kolte)
4th Jt. Civil Judge (S.D.), Akola.

CERTIFICATE

I hereby certify that, the contents of this PDF are verbatim as per original order.

Name of Stenographer : V.M.Nawle

Court's Name : 4th Jt.CJSD& ACJM, Akola.

Date : 15.06.2024

Signed by Presiding Officer on : 15.06.2024

Uploaded on : 15.06.2024